

Message Text

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DRAFTED BY EUR/CAN:DBLAKEMORE:CLJ

APPROVED BY EUR/CAN:JHROUSE,JR.

EB-MR. LOCKWOOD

L/EB-MR. BENSON

JUSTICE-MR. DAVIDOW(INFO)

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FM SECSTATE WASHDC

TO AMEMBASSY OTTAWA PRIORITY

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STADIS////////////////////////////////

E.O. 11652:N/A

TAGS:EINV, ETRD, CA

SUBJECT:POTASH ANTITRUST CASE

REF: (A) OTTAWA 3653; (B) STATE 225431

1. CANADIAN ECONOMIC COUNSELOR MERKLINGER CALLED AT THE DEPARTMENT SEPTEMBER 11 TO EXPRESS GOC VIEWS CONCERNING JUSTICE DEPARTMENT PLANS TO INTERVIEW A LARGE NUMBER OF CANADIANS IN CONNECTION WITH THE SUBJECT CASE (REF B). MERKLINGER SAID THAT WHILE THERE IS NO OBJECTION TO JUSTICE DEPARTMENT INTERVIEWS WITH CORPORATE OFFICIALS, NEITHER THE GOVERNMENT OF SASKATCHEWAN NOR THE GOC IS PREPARED TO GIVE ITS BLESSING TO ANY INTERVIEWS WITH PRESENT OR FORMER GOVERNMENT OFFICIALS. SIMILARLY, THE CANADIAN DEPARTMENT OF JUSTICE IS OPPOSED AS A MATTER OF POLICY TO THE INVOLVEMENT OF FEDERALLY APPOINTED JUDGES IN ANY CONTROVERSIAL MATTER OF THIS KIND. MERKLINGER SAID HE EXPECTS THE GOC WILL WISH TO RAISE WITH THE U.S. THIS

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WEEK THE PROCEDURES FOLLOWED BY THE JUSTICE DEPARTMENT IN

MAKING CONTACTS IN THIS CASE, AND HE ASKED THAT FURTHER CONTACTS BE DEFERRED UNTIL AFTER SUCH A MEETING.

2. IN A MEETING BETWEEN STATE AND JUSTICE OFFICIALS SEPT. 13, JUSTICE AGREED TO PROCEED WITH CONTACTS WITH CORPORATE OFFICIALS ONLY PENDING A STATE/JUSTICE MEETING WITH CANADIAN

OFFICIALS. SUCH A MEETING WILL PROVIDE AN OPPORTUNITY FOR JUSTICE TO EXPLAIN TO CANADIAN OFFICIALS ITS OBJECTIVES IN SEEKING TO INTERVIEW SUCH A LARGE NUMBER AND WIDE VARIETY OF CANADIANS. JUSTICE OFFICIALS ARE HOPEFUL THAT IN THE LIGHT SHED BY AN EXPLANATION OF ITS REASONS FOR WANTING TO INTERVIEW PROVINCIAL AND FEDERAL OFFICIALS, AN UNDERSTANDING CAN BE REACHED WITH THE GOC TO ALLOW AT LEAST SOME OF THE INTERVIEWS TO PROCEED. JUSTICE IS MOST ANXIOUS THAT THE MEETING TAKE PLACE IN THE NEAR FUTURE. WE AGREED TO EXPLAIN TO THE CANADIANS THE URGENCY OF THE MATTER, BUT ALSO STRESSED TO JUSTICE OFFICIALS THE PROBLEMS CREATED BY THE PROCEDURE USED IN THIS INSTANCE AND THE NEED FOR CLOSER COOPERATION BETWEEN STATE AND JUSTICE IN THIS CASE.

3. WE HAVE INFORMED THE CANADIAN EMBASSY OF JUSTICE'S AGREEMENT TO DEFER FURTHER CONTACTS, EXCEPT WITH CORPORATE OFFICIALS, PENDING A STATE/JUSTICE/CANADIAN EMBASSY MEETING. IN SO DOING, WE SUGGESTED IT MIGHT BE FRUITFUL FOR THE EMBASSY TO INVITE THE MINISTRY OF CONSUMER AND CORPORATE AFFAIRS TO SEND A REPRESENTATIVE TO THE MEETING. WE ALSO EMPHASIZED THAT THE MEETING SHOULD TAKE PLACE IN THE NEAR FUTURE; IF IT LOOKS AS THOUGH THE CANADIANS WILL NOT BE PREPARED TO SEEK A MEETING THIS WEEK, WE WILL PROBABLY WANT TO CALL IN MERKLINGER FOR THE PURPOSES DETAILED IN PARAGRAPH 2 ABOVE.

4. BEGIN FYI: THE REASONS PUT FORWARD BY JUSTICE FOR EXTENSIVE INTERVIEWS INCLUDE THE NEED TO BE ABLE TO REBUT TESTIMONY WHICH DEFENSE ATTORNEYS ARE THOUGHT TO BE TAKING FROM PROVINCIAL OFFICIALS, AN EFFORT TO STRENGTHEN JUSTICE'S OWN PRIMARY CASE THROUGH IMPORTANT TESTIMONY CERTAIN SASKATCHEWAN OFFICIALS ARE SAID TO BE ANXIOUS LIMITED OFFICIAL USE

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TO GIVE, AND A DESIRE TO UNDERSTAND MORE FULLY ALLEGATIONS THAT FEDERAL OFFICIALS WERE FULLY AWARE OF THE ANTI-TRUST IMPLICATIONS IN THE U.S. OF COORDINATING U.S. PRODUCTION WITH THE SASKATCHEWAN RATIONING PROGRAM. NOTWITHSTANDING THESE OBJECTIVES, JUSTICE HAS INDICATED WILLINGNESS TO DROP NAMES OF GOVERNMENT OFFICIALS WHO ARE NOT RPT NOT PROVIDING INTERVIEWS OR TESTIMONY FOR THE DEFENSE SIDE. IF OFFICIALS ARE NOT PROVIDING INFORMATION

TO THE DEFENSE, JUSTICE IS PREPARED TO LEAVE THEM ALONE.
IF ANY OFFICIAL IS PROVIDING INFO OR TESTIMONY TO THE
DEFENSE, JUSTICE WOULD WISH TO RESERVE RIGHT TO MAKE
VOLUNTARY REQUESTS THAT THEY ALSO SPEAK WITH JUSTICE
OFFICIALS AT SOME FUTURE TIME IN THE U.S. OR CANADA PRIOR
TO TRIAL. WE ARE HOPEFUL THAT DROPPING THE NAMES OF
GOVERNMENT OFFICIALS WITH THIS CAVEAT WILL BE ACCEPTABLE.:
END FYI. ROBINSON

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